

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

VIKTOR SHEVCHENKO,	)	
	)	No. CV-07-0014-CI
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	AND GRANTING DEFENDANT'S
MICHAEL J. ASTRUE, Commissioner	)	MOTION FOR SUMMARY JUDGMENT
of Social Security,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

BEFORE THE COURT are cross-Motions for Summary Judgment (Ct. Rec. 19, 22.) Attorney Maureen Rosette represents plaintiff Viktor Shevchenko (Plaintiff); Special Assistant United States Attorney David M. Blume represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and orders entry of judgment for Defendant.

**JURISDICTION**

Plaintiff filed applications for disability insurance benefits (DIB) and Social Security Income (SSI) benefits in October 2000, alleging low back pain with left side radiculopathy and chest wall pain. (Tr. 127.) His claim was denied initially and on reconsideration in February 2001. (Tr. 55-57.) Plaintiff reapplied

1 for DIB and SSI in March 2002 (Tr. 24), alleging low back pain and  
2 shoulder pain and an onset date of July 30, 1997, or August 2000.  
3 (Tr. 171-80.) Benefits were denied initially and on reconsideration  
4 in August 2002. (Tr. 61-63.) Plaintiff requested a hearing before  
5 an administrative law judge (ALJ), which was held before ALJ R.J.  
6 Payne on July 1, 2003. Medical expert Glen Almquist, M.D.,  
7 testified. (Tr. 721-27.) Supplemental hearings were held on March  
8 1, 2005, at which medical expert Daniel Girzadas, M.D., testified,  
9 and on May 6, 2005, at which vocational expert Deborah Lapoint  
10 testified. (Tr. 649-727.) Plaintiff, who is from Russia, was  
11 present at the hearing and testified through an interpreter.  
12 Plaintiff was represented by counsel. Based on new and material  
13 evidence, the ALJ reopened the 2000 application; he issued a  
14 partially favorable decision on September 8, 2005, finding Plaintiff  
15 was disabled from July 1, 2000, to July 1, 2001. (Tr. 24-40.) The  
16 Appeals Council denied review. (Tr. 10-12.) The instant matter is  
17 before this court pursuant to 42 U.S.C. § 405(g).

#### 18 **STATEMENT OF THE CASE**

19 The facts of the case are set forth in detail in the transcript  
20 of proceedings, and are briefly summarized here. At the time of the  
21 hearing, Plaintiff was 37 years old, was married and had four  
22 children. He had completed 12 years of education in Russia and had  
23 past relevant work as a metal fabrication helper, machine presser,  
24 artificial flower maker, assembler/electrical accessories,  
25 electronic assembler, industrial cleaner and boat outfitter. (Tr.  
26 178, 181-87, 687-88.) He last worked in July 2000. (Tr. 128.) He  
27 testified he could not work because of pain when he walked and pain  
28 in his back and shoulder. (Tr. 662.)

**ADMINISTRATIVE DECISION**

At step one, ALJ Payne found Plaintiff had not engaged in substantial gainful activity since July 1, 2000. (Tr. 38.) At step two, he found Plaintiff had the severe impairments of degenerative disc disease of the lumbar spine, status post fusion of L4-5 to L5-S1, and pain in the right shoulder since July 2000. (Tr. 33, 38.) He concluded that from July 1, 2000, until July 1, 2002, Plaintiff had an impairment that met the severity requirements listed in section 1.04A in 20 C.F.R., Appendix 1, Subpart P, Regulations No. 4 (Listings); however, after July 1, 2001, Plaintiff's impairments did not meet or equal the Listings. (Tr. 38.) The ALJ found Plaintiff's allegations regarding the extent of his functional limitations were "not fully credible." (Tr. 34.) At step four, he determined that after July 1, 2001, Plaintiff had a residual functional capacity (RFC) for light exertion, with several non-exertional limitations, including mild to moderate, frequent pain. (Tr. 38.) The ALJ concluded Plaintiff was unable to perform his past relevant work and was unable to communicate in English. (Tr. 39.) Based on vocational expert testimony, the ALJ determined Plaintiff could perform a significant number of other jobs in the national economy, including assembly work. (Tr. 37, 38.)

**STANDARD OF REVIEW**

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the court set out the standard of review:

A district court's order upholding the Commissioner's denial of benefits is reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9<sup>th</sup> Cir. 2000). The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999). Substantial evidence is defined as being more than a mere

scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

#### SEQUENTIAL PROCESS

Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the requirements necessary to establish disability:

Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his impairments "are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components.

In evaluating whether a claimant suffers from a disability, an ALJ must apply a five-step sequential inquiry addressing both components of the definition, until a question is answered affirmatively or negatively in such a way that an ultimate determination can be made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The claimant bears the burden of proving that [s]he is disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). This requires the presentation of "complete and detailed objective medical reports of h[is] condition from

1 licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
2 404.1512(a)-(b), 404.1513(d)).

3 It is the role of the trier of fact, not this court, to resolve  
4 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
5 supports more than one rational interpretation, the court may not  
6 substitute its judgment for that of the Commissioner. *Tackett*, 180  
7 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
8 Nevertheless, a decision supported by substantial evidence will  
9 still be set aside if the proper legal standards were not applied in  
10 weighing the evidence and making the decision. *Browner v. Secretary*  
11 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
12 there is substantial evidence to support the administrative  
13 findings, or if there is conflicting evidence that will support a  
14 finding of either disability or non-disability, the finding of the  
15 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
16 1230 (9<sup>th</sup> Cir. 1987).

### 17 ISSUES

18 The question is whether the ALJ's decision is supported by  
19 substantial evidence and free of legal error. Plaintiff argues the  
20 ALJ erred when he (1) improperly rejected the Medical Source  
21 Statement opinions of treating physician, Barry Bacon, M.D., and (2)  
22 relied on medical expert testimony. (Ct. Rec. 20 at 12-14.)  
23 Plaintiff asserts the objective medical evidence supports Dr.  
24 Bacon's opinions regarding severity of his limitations, which if  
25 credited, would support a disability determination for the entire  
26 period at issue. (*Id.* at 18.)

### 27 DISCUSSION

28 Evidence submitted by Plaintiff includes extensive records

1 documenting Plaintiff's diagnoses and treatment for low back pain,  
2 shoulder pain and chest wall pain. Dr. Bacon treated Plaintiff from  
3 1997 through July 2005, and referred Plaintiff to numerous  
4 specialists in an attempt to identify the source of Plaintiff's  
5 ongoing complaints. (Tr. 208-35, 406-09, 438-52, 551-65.) The  
6 examining specialists ordered extensive testing and imaging and  
7 prepared detailed reports explaining their findings. (See, e.g.,  
8 Tr. 332, 340, 521, 523, 624.)

9 Dr. Bacon opined in a Medical Source Statement dated July 1,  
10 2003, that Plaintiff was restricted to lifting and carrying no more  
11 than ten pounds occasionally and less than ten pounds frequently;  
12 standing and/or walking less than two hours in an eight-hour  
13 workday; sitting less than about six hours in an eight-hour workday;  
14 and limited pushing and pulling due to right shoulder pain. He also  
15 opined Plaintiff could (1) perform postural activities for no more  
16 than very brief periods of time due to increase of pain with  
17 activity, and (2) perform manipulative functions occasionally due to  
18 limitations in strength and sensation.<sup>1</sup> (Tr. 445-47.)

19 Dr. Girzadas, who testified at the March 1, 2005, hearing,  
20 reviewed Plaintiff's entire medical record, including Dr. Bacon's  
21 clinical notes, diagnostic testing results and records and reports  
22 from the examining medical specialists and agency physicians, and  
23 opined Plaintiff retained an ability to lift or carry 20 pounds  
24 occasionally, 10 pounds frequently, stand or walk at least two hours  
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26 <sup>1</sup> "[O]ccasionally" means occurring from very little up to one-  
27 third of the time," and "frequent" means occurring from one-third to  
28 two-thirds of the time." *Social Security Ruling (SSR)* 83-10.

1 in an eight-hour day and sit about six hours in an eight-hour day;  
2 pushing and pulling with foot controls would be precluded, but there  
3 were no restrictions for the left upper extremity and pushing and  
4 pulling on the right side would be limited to 20 pounds with both  
5 arms. He found Plaintiff could do ramps and stairs occasionally,  
6 but should never climb ropes, ladders or scaffolds, and only  
7 occasional balancing, kneeling, crouching, crawling, and stooping.  
8 He could reach with the right upper extremity occasionally over  
9 shoulder height in all directions; handling, fingering and feeling  
10 of the right arm were unlimited, and Plaintiff should avoid  
11 hazardous machinery and heights. Dr. Girzadas attributed these  
12 limitations to back and chest pain. (Tr. 32, 568-71, 712-13.)

13 In finding Plaintiff was not disabled after July 2001, the ALJ  
14 rejected Dr. Bacon's MSS opinions, which represented an ability to  
15 do less than sedentary work,<sup>2</sup> in favor of less restrictive  
16 limitations opined by Dr. Girzadas. (Tr. 33-35). He reasoned Dr.  
17 Bacon's opinions were not supported by other objective findings in  
18 the record and were based on Plaintiff's unreliable self-report.  
19 (Tr. 36.)

20 **A. Medical Source Opinions**

21 In a disability proceeding, it is the role of the ALJ to  
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23 <sup>2</sup> Sedentary work involves lifting no more than ten pounds at a  
24 time. It requires an ability to sit for six out of an eight-hour  
25 day and to walk and stand not more than two hours in an eight-hour  
26 day. SSR 83-10. An ability to do less than a full range of  
27 sedentary work however, does not necessarily mean a person is  
28 disabled. SSR 96-6p.

1 resolve conflicts in medical evidence. 20 C.F.R. §§ 404.1527,  
2 416.927; *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195  
3 (9<sup>th</sup> Cir. 2004). A treating physician's opinion is given special  
4 weight because of his familiarity with the claimant and his physical  
5 condition. See *Fair v. Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir. 1989).  
6 A treating physician's opinion "on the ultimate issue of disability"  
7 must itself be credited if uncontroverted and supported by medically  
8 accepted diagnostic techniques unless it is rejected with "clear and  
9 convincing" reasons. *Holohan v. Massanari*, 246 F.3d 1195, 1202-03  
10 (9<sup>th</sup> Cir. 2001); *Lester v. Chater*, 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995).  
11 If contradicted, the ALJ may reject the opinion if he states  
12 specific, legitimate reasons that are supported by substantial  
13 evidence. See *Flaten v. Secretary of Health and Human Serv.*, 44  
14 F.3d 1453, 1463 (9<sup>th</sup> Cir. 1995); *Fair*, 885 F.2d at 605.

15 To meet this burden, the ALJ can set out a detailed and  
16 thorough summary of the facts and conflicting clinical evidence,  
17 state his interpretation of the evidence, and make findings. *Thomas*  
18 *v. Barnhart*, 278 F.3d 947, 957 (9<sup>th</sup> Cir. 2002); *Magallanes v. Bowen*,  
19 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). The ALJ is not required to accept  
20 the opinion of a treating or examining physician if that opinion is  
21 brief, conclusory and inadequately supported by clinical findings.  
22 *Id.*

23 Courts have upheld an ALJ's decision to reject the opinion of  
24 an examining physician based in part on the testimony of a non-  
25 examining medical advisor. *Lester*, 81 F.3d at 831. The analysis  
26 and opinion of an expert selected by an ALJ may be helpful in his  
27 adjudication, and the court should not second guess the ALJ's  
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1 resolution of conflicting medical testimony. *Andrews*, 53 F.3d at  
2 1041 (*citing Magallanes*, 881 F.2d at 753.) Further, testimony of a  
3 medical expert may serve as substantial evidence when supported by  
4 other evidence in the record. *Id.* If supported by substantial  
5 evidence, the ALJ's decision must be upheld, even where the evidence  
6 is susceptible to more than one rational interpretation. *Andrews*,  
7 53 F.3d at 1039-40.

8 Plaintiff contends the ALJ reasons were not adequate to reject  
9 Dr. Bacon's opinions, and if credited, would support a finding of  
10 "disabled." (Ct. Rec. 20 at 12.) While Dr. Bacon's opinions are  
11 important and must be considered, those opinions are contradicted by  
12 examining specialists; therefore, they are not controlling.  
13 Further, they are not the equivalent of a residual functional  
14 assessment (RFC), which is an administrative finding on Plaintiff's  
15 ability to perform basic work functions, an issue reserved to the  
16 Commissioner. SSR 96-5p. Dr. Bacon's Medical Source Statement is  
17 one piece of the evidence the ALJ must consider, together with the  
18 entire case record, in making his final disability determination.  
19 It is the ALJ's responsibility to determine what weight to give to  
20 Dr. Bacon's opinions and other medical sources in assessing  
21 Plaintiff's ability to perform work; however, as discussed above,  
22 specific and legitimate reasons must be given to reject Dr. Bacon's  
23 contradicted opinions regarding Plaintiff's limitations. *Andrews*,  
24 53 F.3d at 1039, 1041; *Magallanes*, 881 F.2d at 751. The ALJ does  
25 not have to accept opinions that are brief and conclusory and  
26 unsupported by clinical findings. *Thomas*, 278 F.3d at 957.

27 Here, the ALJ fully considered Dr. Bacon's opinions, and gave  
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1 more weight to reports and the opinions of the specialists to whom  
2 Dr. Bacon referred Plaintiff, as well as the interpretive testimony  
3 of Dr. Girzadas. (Tr. 35.) His determination is supported  
4 reasonably by the record.

5 Among the specialists who saw Plaintiff after July 2001 were  
6 neurologist J. Robert Clark, M.D.; neurosurgeon John J. Demakas,  
7 M.D.; orthopedic surgeon, Eugene Pontecorvo, M.D.; and neurologist  
8 William Bozarth, M.D. Dr. Clark examined Plaintiff in December  
9 2001, and reported no complaints of upper extremity weakness or  
10 paresthesia (numbing, tingling, burning), no evidence of disc  
11 herniation and no abnormality of the spine except for the fusion  
12 site. (Tr. 332.) After the examination, Dr. Clark concluded  
13 Plaintiff was "probably significantly deconditioned" and not capable  
14 of much physical activity at that time. He recommended supervised  
15 rehabilitation of the spine. (Tr. 334-35.)

16 Dr. Demakas performed lumbar spine fusion surgery on Plaintiff  
17 in February 2001. After an August 2001 examination, Dr. Demakas  
18 opined Plaintiff could not return to his prior work of laying  
19 floors, but reported Plaintiff did not have "any specific  
20 restrictions as far as lifting," and should be able to lift 20  
21 pounds. (Tr. 339.) He examined Plaintiff in March 2002 and  
22 reported x-rays showed the interbody cages in good position without  
23 complication and unchanged from previous studies. He ordered a bone  
24 scan to determine if there were areas of inflammation to account for  
25 Plaintiff's complaints of pain. (Tr. 340-42.) The bone scan in  
26 April 2002 showed some degenerative disc disease at the fusion site,  
27 but no inflammation or significant abnormality was indicated. (Tr.

1 343.)

2 In October 2002, Dr. Pontecorvo found no significant objective  
3 neurological abnormalities and no evidence of atrophy anywhere in  
4 his exam of Plaintiff, despite Plaintiff's claimed inability to do  
5 range of motion tests because of pain. (Tr. 410.) Dr. Pontecorvo  
6 also noted that MRI imaging results showed mild impingement at the  
7 shoulder that should resolve with physical therapy. (Id.)

8 In August 2004, Dr. Bozarth completed a thorough exam and  
9 reported Plaintiff's complaints were inconsistent with objective  
10 findings and Plaintiff's behavior during the exam. (Tr. 541-42.)  
11 Specifically, Dr. Bozarth noted Plaintiff demonstrated "marked  
12 diminution in range of motion of the right shoulder" even though the  
13 shoulder was normal in many of the prior evaluations; he also  
14 remarked that Plaintiff demonstrated more ability to move when he  
15 spontaneously adjusted his gown on his shoulder than he demonstrated  
16 on exam. (Tr. 542.) Dr. Bozarth also noted that Plaintiff's upper  
17 extremities did not show significant asymmetry in girth or atrophy  
18 of the shoulder girdle. (Tr. 539, 542.) Dr. Bozarth concluded  
19 Plaintiff could function in a sedentary to light duty capacity with  
20 the ability to change position as needed, and limited in lifting and  
21 bending. (Tr. 542.)

22 Upon referral from Dr. Bacon, Dr. Clark examined Plaintiff  
23 again in June 2005 and administered nerve conduction tests to  
24 identify the reasons for Plaintiff's complaints. (Tr. 624-25.) He  
25 noted Plaintiff showed normal strength in his lower extremities  
26 without localized atrophy. The nerve conduction tests were within  
27 normal limits and, significantly, showed "no evidence for motor  
28

1 nerve root injury or axonal loss or other chronic motor unit change  
2 in the L2 through S2 distribution in either lower extremity." (Tr.  
3 625.) There was no evidence of peripheral or sciatic neuropathy in  
4 either lower extremity. (Id.) An electroencephalogram also was  
5 administered, based on Plaintiff's complaints of shaking and  
6 numbness in his arms, legs and left face; the results were normal.  
7 (Tr. 627.)

8 At the March 2005 hearing, Dr. Girzadas gave extensive  
9 testimony and summarized the medical record in its entirety,  
10 including the significant number of specialized diagnostic tests and  
11 imaging reports. (Tr. 705-11.) Based on the examining specialists  
12 records, he concluded Plaintiff met Listing 1.04(a) from July 2000  
13 to July 2001; thereafter, the diagnostic reports did not support a  
14 Listing or an inability to do work activities. (Tr. 711-12.)

15 An examining physician's opinion that contradicts a treating  
16 physician's opinion is considered substantial evidence if the  
17 examining physician's opinion is based on independent clinical  
18 findings from objective testing that differ from treating physician  
19 findings. *Orn v. Astrue*, \_\_\_\_ F.3d \_\_\_\_, No. 05-161181, 2007 WL  
20 2034287 (9<sup>th</sup> Cir. July 16, 2007). As discussed above, Dr. Girzadas's  
21 opinions are supported by the numerous reports from the examining  
22 specialists and diagnostic testing over the relevant years that  
23 generally were within normal limits and showed no significant  
24 abnormalities. (See, e.g., Tr. at 227, 235, 262, 269, 305, 315,  
25 320, 325-28, 341-44, 348, 361-69, 423, 442, 472-74, 477, 482, 489,  
26 559-64, 637-39, 642-44.) In addition, as stated in the  
27 Commissioner's regulations, these specialist opinions generally are

1 given more weight in evaluating medical evidence than opinions from  
2 non-specialists. See 20 C.F.R. §§ 404.1527(d)(5), 416.927(d)(5).

3 The ALJ's did not err in giving more weight to the examining  
4 specialists' opinions, which were based on substantial objective  
5 evidence. Dr. Girzadas's opinion that Plaintiff's limitations were  
6 less restrictive than those set forth in Dr. Bacon's Medical Source  
7 Statement is, therefore, supported by substantial evidence in the  
8 entire record. The ALJ did not err in relying on Dr. Girzadas's  
9 testimony.

#### 10 **B. Credibility**

11 Although Plaintiff does not challenge the ALJ's credibility  
12 findings, he appears to argue that unreliable self-report is not a  
13 sufficiently specific and legitimate reason to reject his treating  
14 source's opinions. He contends that Dr. Bacon's more restrictive  
15 limitations were based on more than self-report; therefore, the  
16 ALJ's rejection of those limitations was error. (Ct. Rec. 20 at  
17 15.)

18 As discussed above, the ALJ reasonably gave more weight to  
19 medical evidence of less restrictive limitations than those opined  
20 by Dr. Bacon. Even where, as here, a claimant introduces medical  
21 evidence showing that he has an ailment expected to produce some  
22 pain, an ALJ cannot be required to believe every allegation of  
23 disabling pain, or else disability benefits would be available for  
24 the asking, a result plainly contrary to 42 U.S.C. § 423 (d)(5)(A).  
25 Many medical conditions produce pain, but not all are severe enough  
26 to preclude gainful employment. *Fair*, 885 F.2d at 603. Further, it  
27 is well settled that among the appropriate reasons for rejecting a  
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1 treating doctor's opinions is evidence of a claimant's unreliable  
2 self-report. See *Flaten*, 44 F.3d at 1463-64; *Fair*, 885 F.2d at 604  
3 (conflicting medical evidence, the absence of regular medical  
4 treatment during the alleged period of disability, and the lack of  
5 medical support for doctors' reports based substantially on a  
6 claimant's subjective complaints recognized as appropriate reasons  
7 for rejecting treating source opinions).

8 However, an adjudicator "may not discredit a claimant's  
9 testimony of pain and deny disability benefits solely because the  
10 degree of pain alleged by the claimant is not supported by objective  
11 medical evidence." 20 C.F.R. §§ 404.1529(c)(2), 416.929(c)(2);  
12 *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9<sup>th</sup> Cir. 1991). Thus,  
13 where a case turns on the reliability of a claimant's allegations of  
14 pain, credibility findings are critical. Absent evidence of  
15 malingering, the ALJ must give "clear and convincing" reasons to  
16 discount Plaintiff's pain testimony. *Smolen v. Chater*, 80 F.3d  
17 1273, 1281 (9<sup>th</sup> Cir. 1996).

18 Here, the ALJ gave very specific reasons for finding Plaintiff  
19 not credible: Plaintiff was able to work at substantial gainful  
20 activity until July 2000, inconsistent with his claims of almost  
21 total incapacity; he reported that he had been fighting a fire in  
22 October 2001; he reported household activities inconsistent with  
23 total disability; there were inconsistencies between emergency room  
24 and physical therapy reports and his stated incapacity; and Drs.  
25 Bozarth and Pontecorvo's observed no evidence of atrophy, despite  
26 Plaintiff's claims of inactivity. (Tr. 35.) In addition, as  
27 discussed above, the ALJ findings that the severity of Plaintiff's  
28

1 complaints was inconsistent the reports of the many specialists who  
2 examined Plaintiff are amply supported by the record. These are  
3 "clear and convincing" reasons to discount Plaintiff's self-report  
4 of total disability. Combined with the specialist's opinions of  
5 less restrictive limitations and the lack of objective findings to  
6 explain the degree of pain alleged, the ALJ's credibility findings  
7 are sufficient to reject Dr. Bacon's opinions of severe limitations.  
8 *Thomas*, 278 F.3d at 959.

9 **CONCLUSION**

10 The record viewed in its entirety supports Dr. Girzadas's  
11 opinions and reasonably supports the ALJ's rejection of Dr. Bacon's  
12 Medical Source Statement opinions. The ALJ's determination that  
13 Plaintiff is able to perform a significant range of light and  
14 sedentary work is based on substantial evidence and free of legal  
15 error. Accordingly,

16 **IT IS ORDERED:**

17 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 19**) is  
18 **DENIED.**

19 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 22**) is  
20 **GRANTED;**

21 The District Court Executive is directed to file this Order and  
22 provide a copy to counsel for Plaintiff and Defendant. Judgment  
23 shall be entered for Defendant and the file shall be **CLOSED.**

24 DATED November 2, 2007.

25  
26 S/ CYNTHIA IMBROGNO  
27 UNITED STATES MAGISTRATE JUDGE  
28